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12 Catherine Steege (admitted *pro hac vice*)
13 Katharine R. Ciliberti (admitted *pro hac vice*)
14 JENNER & BLOCK LLP
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16 Chicago, IL 60654
17 Telephone: (312) 222-9350
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21 kciliberti@jenner.com

22 *Counsel for Uber Technologies, Inc.*

23 **UNITED STATES BANKRUPTCY COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **SAN FRANCISCO DIVISION**

26 In re:
27
28 ANTHONY SCOTT LEVANDOWSKI,

Debtor.

Case No. 20-30242 (HLB)

Chapter 11

ANTHONY SCOTT LEVANDOWSKI, an
individual,

Adv. Pro. No. 20-03050 (HLB)

Plaintiff,

v.

UBER TECHNOLOGIES, INC.

Defendant.

**DECLARATION OF KATHARINE
CILIBERTI IN SUPPORT OF UBER
TECHNOLOGIES, INC.'S REPLY IN
SUPPORT OF MOTION TO STRIKE
OR, IN THE ALTERNATIVE, MOTION
IN LIMINE TO EXCLUDE REBUTTAL
EXPERT REPORTS AND TESTIMONY
OF BENJAMIN ROSE AND JOSEPH
SHAW**

1 I, Katharine Ciliberti, hereby declare as follows:

2 1. I am co-counsel to Defendant Uber Technologies, Inc. (“Uber”) in the above-entitled
3 action and have personal knowledge of the facts contained in this Declaration, which are true and
4 correct, and if sworn as a witness, I could and would testify competently thereto.

5 2. I submit this declaration in connection with Uber’s *Reply In Support Of Motion to*
6 *Strike or, in the Alternative, Motion in Limine to Exclude Rebuttal Expert Reports and Testimony of*
7 *Benjamin Rose and Joseph Shaw*.

8 3. Attached hereto as **Exhibit E** is a true and correct copy of a February 23, 2021 email
9 from H. Vu to D. Bradford confirming that Mr. Levandowski did not serve any opening expert
10 reports.

11 4. Mr. Shaw’s “rebuttal” report was a complete surprise to Uber. Uber was not able to
12 anticipate and rebut the untimely Shaw Report because Mr. Levandowski did not seek permission to
13 show Dr. Shaw confidential information prior to serving his report on March 22, 2021.

14 5. Attached hereto as **Exhibit F** is a true and correct copy of an excerpt from the
15 deposition of Benjamin Rose, dated March 30, 2021.

16 6. Attached hereto as **Exhibit G** is a true and correct copy of an email exchange between
17 T. Mascherin and H. Vu, et al., dated March 28 and 29, 2021, in which counsel for Mr. Levandowski
18 refused to postpone the depositions of Mr. Rose and Dr. Shaw.

19 7. Attached hereto as **Exhibit H** is a true and correct copy of an email exchange between
20 D. Bradford and H. Vu, et al., dated April 1, 2021, in which counsel for Mr. Levandowski refused to
21 postpone the deposition of Dr. Shaw.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

8. Attached hereto as **Exhibit I** is a true and correct copy of an email from D. Bradford to H. Vu, et al., dated January 24, 2021, in which Dr. Bradford stated in part, “[U]ber does contend that alleged Trade secret 90 included Google confidential information that [L]evandowski caused Tyto to transfer to Otto, so as to constitute a psba, as set forth in our interrogatory answer on psba’s.”

I declare under the penalty of perjury that the statements included in this Declaration are true and correct. Executed on this 27th day of April 2021 in Chicago, Illinois.

/s/ Katharine Ciliberti
Katharine Ciliberti

EXHIBIT E

From: Vu, Hong-An <HVu@goodwinlaw.com>
Sent: Tuesday, February 23, 2021 10:47 AM
To: Bradford, David J. <dbradford@jenner.com>
Cc: Steege, Catherine L. <CSteege@jenner.com>; Mascherin, Terri L. <TMascherin@jenner.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>; Schuman, Brett <BSchuman@goodwinlaw.com>
Subject: RE: Expert reports

External Email – Exercise Caution

David,

This is correct. We did not serve any opening expert reports.

Thanks,
Hong-An

Hong-An Vu
she/her/hers

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-----Original Message-----

From: Bradford, David J. <dbradford@jenner.com>
Sent: Tuesday, February 23, 2021 6:43 AM
To: Vu, Hong-An <HVu@goodwinlaw.com>
Cc: Steege, Catherine L. <CSteege@jenner.com>; Mascherin, Terri L. <TMascherin@jenner.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>; Schuman, Brett <BSchuman@goodwinlaw.com>
Subject: Expert reports

Hong-An, please confirm that Mr. Levandowski did not serve any expert reports.
Thanks, David

Sent from my iPhone

David J. Bradford

Jenner & Block LLP
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EXHIBIT F

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE:)	Bankruptcy Case
ANTHONY SCOTT LEVANDOWSKI,)	No. 20-30242
)	(HLB)
Debtor.)	Chapter 11
)	Adv. Pro. No.
<hr/> ANTHONY LEVANDOWSKI, an)	20-03050 (HLB)
individual,)	
)	
Plaintiff,)	
)	
vs.)	
)	
UBER TECHNOLOGIES, INC.,)	
)	
Defendant.)	

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

The discovery video
teleconference deposition of BENJAMIN ROSE,
called by the Defendant, for examination, taken
pursuant to the Federal Rules of Civil Procedure
of the United States Bankruptcy Courts
pertaining to the taking of depositions, taken
remotely before LAURA MUKAHIRN, CSR, RPR, CRR,
within and for the County of Cook and State of
Illinois, on March 30, 2021, scheduled to
commence at 2:00 o'clock p.m. CST.

A P P E A R A N C E S:

GOODWIN PROCTER, LLP
BY: MS. RACHEL WALSH
MR. DANIEL MELLO

rwalsh@goodwinlaw.com
dmello@goodwinlaw.com
601 Marshall Street
Redwood City, California 94063
(650)752-3100

Appeared on behalf of the Plaintiff;

JENNER & BLOCK, LLP
BY: MS. TERRI MASCHERIN
MS. LINA POWELL

tmascherin@jenner.com
lpowell@jenner.com
353 North Clark Street
Suite 4500
Chicago, Illinois 60654
(312) 222-9350

Appeared on behalf of the Defendant.

ALSO PRESENT:

MR. ROBERT DeCICCO

1 report that you prepared in this case?

2 A. Yes.

3 Q. The report on the first page bears the
4 title Rebuttal Expert Report. Do you see that?

5 A. Yes.

6 Q. Whose testimony are you rebutting?

7 A. I believe I'm rebutting work that was
8 done. I don't --

9 Q. Work that was done by whom?

10 A. By Stroz.

11 Q. So you're not rebutting opinions
12 expressed by another expert?

13 A. Well, the challenging thing with the
14 report that I read or reports from Stroz are
15 there aren't really named parties within who did
16 the work. So I couldn't identify specific
17 people.

18 Q. And you didn't read the testimony that
19 was given by any of the professionals who were
20 involved in the engagement, right?

21 A. I don't recall being given any
22 transcripts of the testimony that they provided.

23 Q. How much time have you spent working on
24 this case, Mr. Rose?

25 A. I would have to estimate the time.

EXHIBIT G

From: Vu, Hong-An <HVu@goodwinlaw.com>
Sent: Monday, March 29, 2021 12:10 AM
To: Mascherin, Terri L.
Cc: DL_Uber – AL Team; Schuman, Brett; Walsh, Rachel M.; Sutton, Theresa Ann; Fisher, Jennifer Briggs; Berry, John; rmeny@keker.com; Thomas E. Gorman; Gorin, Alex; tkeller@kbklp.com; Dara Silveira
Subject: RE: Rose and Shaw Depositions

External Email – Exercise Caution

Terri:

We will not agree to continue the depositions of Rose and Shaw. We have made these experts available for deposition according to the schedule set out by the Court and will not agree to make them available after the April 5 cutoff. If Uber decides to withdraw its request for these depositions, please let us know.

With respect to expedited treatment, the Trial Scheduling Order provides for any oppositions to motions in limine be submitted four days before trial with the motion resolved when trial commences. What alternative schedule does Uber propose? Also, note that we have objected to the testimony of DeCicco as untimely, and Dr. Gerdes on a number of bases, and we expect that Uber would agree to a similar expedited schedule for Mr. Levandowski's motions in limine against these experts. Theresa and I are available to discuss between 10-12 Pacific tomorrow.

Also, please include the Goodwin team on emails going forward. I have also added in the Google team as well.

Thanks,

Hong-An

Hong-An Vu
she/her/hers



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From: Mascherin, Terri L. <TMascherin@jenner.com>
Sent: Sunday, March 28, 2021 3:09 PM
To: Vu, Hong-An <HVu@goodwinlaw.com>
Cc: DL_Uber – AL Team <DL_UberALTeam@jenner.com>
Subject: Rose and Shaw Depositions

Hong-An, given our impasse over the Rose and Shaw reports, we expect to file a motion to strike and/or motion in limine tomorrow. We request your agreement to expedited consideration of the motion. We also request that we defer these two depositions until the Court rules on whether they will be permitted to testify. Please let us know a good time tomorrow morning to discuss.

Regards,
Terri

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EXHIBIT H

From: Vu, Hong-An <HVu@goodwinlaw.com>
Sent: Thursday, April 1, 2021 9:01 PM
To: Bradford, David J.
Cc: Mascherin, Terri L.; Steege, Catherine L.; Ciliberti, Katharine R.; Powell, Lina R.; Schuman, Brett; Walsh, Rachel M.; Fisher, Jennifer Briggs; Berry, John; Rachael Meny; Thomas E. Gorman; rmullen@keker.com; DL_Uber – AL Team
Subject: RE: Levandowski v. Uber

External Email – Exercise Caution

David,

As we have communicated, we believe that Dr. Shaw was properly disclosed and so if Uber wants to take his deposition, it should do so within the expert discovery deadline set by the Court.

The briefing schedule that the Court set for the DeCicco motion will work for us for the Rose/Shaw motion. If we are able to file the Gerdes motion by Monday, will this same schedule work for that motion as well?

Thanks,
Hong-An

Hong-An Vu
she/her/hers



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From: Bradford, David J. <dbradford@jenner.com>
Sent: Thursday, April 1, 2021 6:30 PM
To: Vu, Hong-An <HVu@goodwinlaw.com>
Cc: Mascherin, Terri L. <TMascherin@jenner.com>; Steege, Catherine L. <CSteege@jenner.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>; Powell, Lina R. <LinaPowell@jenner.com>; Schuman, Brett <BSchuman@goodwinlaw.com>; Walsh, Rachel M. <RWalsh@goodwinlaw.com>; Fisher, Jennifer Briggs <JFisher@goodwinlaw.com>; Berry, John <John.Berry@mto.com>; Rachael Meny <rmeny@keker.com>; Thomas E. Gorman <tgorman@keker.com>; rmullen@keker.com; DL_Uber – AL Team <DL_UberALTeam@jenner.com>
Subject: RE: Levandowski v. Uber

If you are unwilling to reschedule his deposition, we will proceed with Dr. Shaw tomorrow. the Judge indicated that she was taking our motion to strike Rose and Shaw on the papers. I suggest we follow the same briefing schedule as she set for your motion to strike DeCicco – is that agreeable?

As there is at least some possibility that the Shaw deposition may not be necessary, we don't understand why you would not reschedule it until after she has ruled – it could save both of our clients' a little bit of time and money. If I don't hear otherwise, we will commence the deposition at 9 pt tomorrow.

Thanks,

David

Ps. We agree that we won't exchange the lists you reference on Monday.

From: Vu, Hong-An <HVu@goodwinlaw.com>
Sent: Thursday, April 1, 2021 8:14 PM
To: Bradford, David J. <dbradford@jenner.com>
Cc: Mascherin, Terri L. <TMascherin@jenner.com>; Steege, Catherine L. <CSteege@jenner.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>; Powell, Lina R. <LinaPowell@jenner.com>; Schuman, Brett <BSchuman@goodwinlaw.com>; Walsh, Rachel M. <RWalsh@goodwinlaw.com>; Fisher, Jennifer Briggs <JFisher@goodwinlaw.com>; Berry, John <John.Berry@mto.com>; Rachael Meny <rmeny@keker.com>; Thomas E. Gorman <tgorman@keker.com>; rmullen@keker.com
Subject: RE: Levandowski v. Uber

External Email – Exercise Caution

David,

Based on the docket order that just came through, the expert discovery deadline was not vacated/continued and as such, we believe the depositions should proceed. If you decide not to depose Dr. Shaw, please let us know. But as previously stated, we will not make Dr. Shaw available after the expert discovery deadline.

I take it from the below that you are in agreement as to the parties' internal deadlines for the exchange of pretrial related materials. As such, we won't be sending over our current exhibit list or further witness list on Monday.

Thanks,

Hong-An

Hong-An Vu
she/her/hers



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From: Bradford, David J. <dbradford@jenner.com>
Sent: Thursday, April 1, 2021 5:58 PM
To: Vu, Hong-An <HVu@goodwinlaw.com>
Cc: Mascherin, Terri L. <TMascherin@jenner.com>; Steege, Catherine L. <CSteege@jenner.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>; Powell, Lina R. <LinaPowell@jenner.com>; Schuman, Brett <BSchuman@goodwinlaw.com>; Walsh, Rachel M. <RWalsh@goodwinlaw.com>; Fisher, Jennifer Briggs <JFisher@goodwinlaw.com>; Berry, John

<John.Berry@mto.com>; Rachael Meny <rmeny@keker.com>; Thomas E. Gorman <tgorman@keker.com>;
rmullen@keker.com

Subject: Re: Levandowski v. Uber

In light of the new schedule, I ask that we postpone Shaws deposition until after she rules on our motion to strike.

Sent from my iPhone

On Apr 1, 2021, at 7:45 PM, Vu, Hong-An <HVu@goodwinlaw.com> wrote:

External Email – Exercise Caution

Uber team,

Because the trial deadlines are now vacated, can we also agree to eliminate for now the internal deadlines to exchange the exhibit list and witness list we agreed to? We can reset these once we learn more when trial will be.

Thanks,
Hong-An

Hong-An Vu
she/her/hers

<image001.png>

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HVu@goodwinlaw.com

<image002.png>

<image003.png>

<image004.png>

<image005.png>

<image006.png>

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EXHIBIT I

From: Bradford, David J.
Sent: Sunday, January 24, 2021 11:51 PM
To: Jordan Jaffe; Hong-An Vu
Cc: Vu, Hong-An; Ciliberti, Katharine R.; Schuman, Brett; Berry, John; Gorin, Alex; DL_Uber – AL Team; Rachael Meny; Reid P. Mullen (rmullen@keker.com); tgorman@keker.com; Andrea P Roberts; Walper, Thomas; Debra Grassgreen
Subject: Re: Levandowski v. Uber -- your question re Gerdes software examination

Hong-An, To be clear, although Uber does not assert (nor does it need to prove) in this proceeding that alleged trade secret 90 qualified as a trade secret, uber does contend that alleged Trade secret 90 included Google confidential information that levandowski caused Tyto to transfer to Otto, so as to constitute a psba, as set forth in our interrogatory answer on psba's.

Sent from my iPhone

On Jan 24, 2021, at 11:24 PM, Jordan Jaffe wrote:

External Email – Exercise Caution

Re #2→ No. Anthony Levandowski does not come up in any of the redacted portions of the final Gerdes report as produced in the Adversary Proceeding.

Jordan R. Jaffe // Quinn Emanuel // 415.498.0556 // jordanjaffe@quinnemanuel.com

From: Bradford, David J.
Sent: Friday, January 22, 2021 5:17 PM
To: Vu, Hong-An ; Jordan Jaffe ; Ciliberti, Katharine R.
Cc: Schuman, Brett ; Berry, John ; Gorin, Alex ; DL_Uber – AL Team ; Rachael Meny ; Reid P. Mullen (rmullen@keker.com) ; tgorman@keker.com; Andrea P Roberts ; Walper, Thomas ; Debra Grassgreen
Subject: RE: Levandowski v. Uber -- your question re Gerdes software examination

[EXTERNAL EMAIL]

Hong-An, we agree with the statement you make in paragraph 1 below. Thanks, David

From: Vu, Hong-An <HVu@goodwinlaw.com>
Sent: Friday, January 22, 2021 2:18 PM
To: Jordan Jaffe <jordanjaffe@quinnemanuel.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>
Cc: Schuman, Brett <BSchuman@goodwinlaw.com>; Berry, John <John.Berry@mto.com>; Gorin, Alex <Alex.Gorin@mto.com>; Bradford, David J. <dbradford@jenner.com>; DL_Uber – AL Team <DL_UberALTeam@jenner.com>; Rachael Meny <rmeny@keker.com>; Reid P. Mullen <rmullen@keker.com> <rmullen@keker.com>; tgorman@keker.com; Andrea P Roberts <andreaproberts@quinnemanuel.com>; Walper, Thomas <thomas.walper@mto.com>; Debra Grassgreen <dgrassgreen@pszjlaw.com>
Subject: RE: Levandowski v. Uber -- your question re Gerdes software examination

External Email – Exercise Caution

Thanks, Jordan.

We have two questions regarding the Gerdes report – one for Uber and one for Waymo.

- 1) Is its Uber's position that only alleged trade secrets 1-3 in the Gerdes report are the basis for a PSSBA under the Indemnification Agreement

- 2) To Waymo – Is Anthony Levandowski referenced in any of the redacted information in the Gerdes report?

Thanks,
Hong-An

Hong-An Vu
she/her/hers

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HVu@goodwinlaw.com | goodwinlaw.com

From: Jordan Jaffe <jordanjaffe@quinnemanuel.com>

Sent: Wednesday, January 20, 2021 5:05 PM

To: Vu, Hong-An <HVu@goodwinlaw.com>; Ciliberti, Katharine R. <KCiliberti@jenner.com>

Cc: Schuman, Brett <BSchuman@goodwinlaw.com>; Berry, John <John.Berry@mto.com>; Gorin, Alex <Alex.Gorin@mto.com>; Bradford, David J. <dbradford@jenner.com>; DL_Uber – AL Team <DL_UberALTeam@jenner.com>; Rachael Meny <rmeny@keker.com>; Reid P. Mullen <rmullen@keker.com> <rmullen@keker.com>; tgorman@keker.com; Andrea P Roberts <andreaproberts@quinnemanuel.com>; Walper, Thomas <thomas.walper@mto.com>; Debra Grassgreen <dgrassgreen@pszjlaw.com>

Subject: RE: Levandowski v. Uber -- your question re Gerdes software examination

We can do so. Waymo also doesn't object to Uber producing the copy of the letter that it has in its possession if that expedites things.

Jordan R. Jaffe // Quinn Emanuel // 415.498.0556 // jordanjaffe@quinnemanuel.com

From: Vu, Hong-An <HVu@goodwinlaw.com>

Sent: Wednesday, January 20, 2021 9:07 AM

To: Ciliberti, Katharine R. <KCiliberti@jenner.com>

Cc: Schuman, Brett <BSchuman@goodwinlaw.com>; Berry, John <John.Berry@mto.com>; Gorin, Alex <Alex.Gorin@mto.com>; Bradford, David J. <dbradford@jenner.com>; DL_Uber – AL Team <DL_UberALTeam@jenner.com>; Rachael Meny <rmeny@keker.com>; Reid P. Mullen <rmullen@keker.com> <rmullen@keker.com>; tgorman@keker.com; Jordan Jaffe <jordanjaffe@quinnemanuel.com>; Andrea P Roberts <andreaproberts@quinnemanuel.com>; Walper, Thomas <thomas.walper@mto.com>; Debra Grassgreen <dgrassgreen@pszjlaw.com>

Subject: RE: Levandowski v. Uber -- your question re Gerdes software examination

[EXTERNAL EMAIL]

Thanks, Katie.

Jordan, will Waymo be willing to produce the engagement letter?

Thanks,
Hong-An

Hong-An Vu
she/her/hers

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Los Angeles, CA 90017